

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROBERT MILLER,

Plaintiff,

V.

**UNIVERSITY OF TX MEDICAL
BRANCH, WILLIAM JONES, VICKIE
MOCEO, LORENZO BUSTOS, DAVID
MARTINEZ,**

Defendants.

Case No. 6:19-CV-248-JDK-JDL

ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Robert Miller, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On June 17, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 6), recommending that the action be dismissed for purposes of *in forma pauperis* proceedings pursuant to the “three strikes” provisions of 28 U.S.C. § 1915(g). A return receipt indicating delivery to Plaintiff was received by the Clerk on June 27, 2019 (Docket No. 8).

Plaintiff did not file formal Objections to the Magistrate Judge's Report and Recommendation. Plaintiff did, however, file a motion stating that he would dismiss his lawsuit if the Court granted an immediate preliminary injunction and a transfer to the Montford Unit. Docket No. 7 at 1. A plaintiff is entitled to preliminary injunctive relief only by carrying the burden of persuasion on four requirements:

(1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that irreparable injury will result if the injunction is not granted, (3) that the

threatened injury outweighs the threatened harm to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.

Miss. Power & Light Co. v. United Gas Pipe Line Co., 760 F.2d 618, 621 (5th Cir. 1985) (quoting *Canal Auth.*, 489 F.2d at 572). Plaintiff did not mention any of these requirements in his motion. Thus, if the Court construes Plaintiff's motion as a proper motion for a preliminary injunction, the Court would deny the motion because Plaintiff failed to carry his burden of persuasion. Further, even if the Court construes Plaintiff's motion as Objections, the Court finds that Plaintiff's Objections are without merit because they do not address the deficiencies recognized by the Magistrate Judge.

Having reviewed the Magistrate Judge's Report and Recommendation, the Court adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 6) be **ADOPTED**. It is further **ORDERED** that the complaint is **DISMISSED WITH PREJUDICE** for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further **ORDERED** that Plaintiff's motion to proceed *in forma pauperis* (Docket No. 2) is **DENIED**. This Order does not bar refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$400.00 filing fee. Plaintiff may resume the lawsuit if he pays the entire filing fee of \$400 within fifteen (15) days after the entry of the Final Judgment. It is finally **ORDERED** that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this 1st day of August, 2019.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE